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Current Topics.

The Cost of Justice

AN interesting document which is published in January of every year is the Account of Receipts and Expenditure of the High Court and the Court of Appeal for the previous financial year ending on 31st March. That for the financial year 1941–42, which has just been published, discloses that the total amount received in court fees, including those taken in stamps and cash, and those payable out of funds in court, and some miscellaneous matters, such as the official solicitor's costs, fees for arbitration rooms, etc., was £818,566. On the expenditure side, judges' salaries and pensions amounted to £180,948. In the Court of Appeal judges' salaries amounted to £49,932; in the King's Bench Division the total was £61,900, in the Chancery Division £24,806, and in the Probate, Divorce and Admiralty Division £25,000. Other salaries, wages and allowances arising out of the administration of justice in the Supreme Court amounted to £418,767. The cost of shorthand reporting was £2,371. On the criminal side the estimated proportion of the salaries of King's Bench judges attributable to criminal work amounted to £30,950 and the total expenditure on criminal business amounted to £81,493. The total expenditure was £951,640. The comparatively small cost of the judiciary to the community contrasts with the magnitude of the services rendered, and although the foreign observer may occasionally wonder at the high salaries paid to our judges, they might equally admire the small total cost at which a great public service is rendered. The present defects of the system, and particularly the high and sometimes prohibitive cost of litigation to the individual might well be remedied by the gradual substitution of an increased charge on the community for the voluntary system of the poor persons' procedure, which places a special burden on the legal profession.

British Nationality and Status of Aliens Bill.

ON the Committee stage of the British Nationality and Status of Aliens Bill in the House of Lords on 3rd February, LORD BALFOUR OF BURLEIGH moved to insert a new clause applying to a woman who was a British subject at the time of her marriage but who by reason of her marriage had acquired the nationality of her husband. The new clause empowered her, within twelve months of the passing of the Act or, if married after the passing of the Act, within twelve months after her marriage, to make a declaration that she desired to retain, while in the United Kingdom, the rights of a British subject, and thereupon she should be entitled to the rights and privileges of duties and liabilities of a British subject. LORD BALFOUR urged that the clause, if passed, would relieve the strain on man power, and would also remove an injustice. VISCOUNT BENNETT asked whether, in the opinion of the Lord Chancellor, any possibility of complications arose in connection with divorce by reason of the amplitude of the terms at the end of the proposed clauses, as it had been held by their Lordships' House that the domicile of the husband was the domicile of the wife, and that she could not acquire separate domicile. VISCOUNT SAMUEL, supporting the amendment, said that the principle had already been adopted in Australia and New Zealand. THE LORD CHANCELLOR pointed out that reg. 60D (2) of the Defence (General) Regulations, 1939, enabled a woman who, having been a British subject, had become an alien by marriage to be treated for the purpose of temporary employment under the Crown as if she had not ceased to be a British subject. A general forward movement on the subject was not possible because it did not come within the terms of the Bill. With regard to the suggested complication of the law of jurisdiction in divorce, his lordship said that the jurisdiction to pronounce a decree in divorce depended upon the matrimonial domicile and not on the nationality. If an Italian married a Russian in accordance with an English ceremony in this country and if the domicile of the parties was British, his lordship apprehended that the right to entertain a suit for divorce would be unaffected by the amendment and by the nationality of the parties. The amendment was by leave withdrawn.

A Defence Regulations Debate.

THE constant vigilance of the House of Commons with regard to new Defence Regulations is one of the gratifying features of our war Parliament. On 3rd February, Mr. LEVY moved that an humble Address be presented to His Majesty praying that an Order in Council amending Regulation 70 of the Defence (General) Regulations, 1939, a copy of which was presented to the House on 19th January, be annulled. The order, he said, was contained in twenty words only, and it gave the Minister of War Transport power to make orders "for removing or modifying, or for limiting the application of, any prohibitions or restrictions imposed by or under any Act." It was, he said, asking for the right to become a dictator on everything to do with road traffic throughout the whole of the country. Mr. WAKEFIELD, seconding the motion, said that if the order were passed, the Minister could, without ever coming before the House, give instructions that all vehicles were to drive on the right of the road, that no perambulators should be pushed on the road; or prohibit cyclists from riding on a road where there was a path for cyclists. Mr. HOLDSWORTH said he believed that the whole of the transport industry of the country could be nationalised if the order were carried. Mr. NOEL-BAKER, replying for the Government, said that the regulation was confined to road traffic and was not applicable to railways and other means of transport. He pointed out that reg. 70 (A) and (B) already gave the suggested powers with regard to bicycles and perambulators. The reason for the present order was the shortage of rubber and petrol. The Government had three objects in view, first, to modify speed limits, secondly, to make it possible for more than one trailer to be towed on the highway, and, thirdly to modify traffic regulations, and in particular to remove or reimpose one-way traffic schemes. Sir HERBERT WILLIAMS said that the order was too wide, and besought Mr. NOEL-BAKER to withdraw the order and to replace it by one in which he laid down the precise powers desired by the Minister. Mr. A. BEVAN said that the Government could not make up their minds when to proceed by Bill and when to proceed by order, and it was becoming more than a full-time job to watch all the orders. Mr. ETHERTON said that if Acts of Parliament were altered they should be altered by the House alone. Mr. NOEL-BAKER then suggested that if the prayer were withdrawn he would undertake to consult with his colleagues to try to find a more restricted form of words which would meet the views of the House. The Privy Council would replace the order by another, and the replacing order would annul that before the House. The prayer was then withdrawn on those terms.

Local Government Reform.

MUCH has been heard recently of the reform of the local government structure of this country as a preliminary to sound planning. The latest and most interesting proposals to this end come in an interim report issued by an independent committee of local government officers appointed in 1941 by the National Association of Local Government Officers. The main suggestion is that there should be set up a local government boundary commission to survey the whole of England and Wales and to recommend such changes in local boundaries as are desirable. The commission, which should be a permanent body, must in the first place divide the country into a number of directly elected all-purpose authorities with populations ranging (save in the case of existing county boroughs of larger size and of sparsely populated rural areas) between a maximum of 500,000 and 100,000. Some of these areas will be mainly urban and others mainly rural. Mainly urban areas should be directed by one authority from a single appropriate centre, but in the mainly rural areas the commission should re-group the existing local

government units into suitable administrative units to which the all-purpose authority, while retaining effective control, would delegate purely local functions. A unit based on an existing non-county borough or urban district with a population, after re-grouping, exceeding 20,000 should retain its directly elected council. In other units a directly elected district council should act as a district committee for the all-purpose authority. The all-purpose authorities should constitute provincial councils covering areas based mainly on common planning characteristics, wider than those of the all-purpose authorities. The object of these provincial councils is to plan and co-ordinate all functions and services requiring a wider area or greater population than the constituent all-purpose authorities, but they are not to have any direct or administrative powers. Their recommendations, it is proposed, should be mandatory upon the all-purpose authorities within their areas. The need for some rearrangement of authorities is emphasised by the observation in the report that local government in England and Wales to-day is administered by 1,530 local authorities of six different types, in addition to 7,000 parish councils and 4,100 parish meetings. Many of these authorities lack the population, financial resources and qualified staffs to provide services of the standard of technical efficiency required to-day. The structure recommended by the report bears many resemblances to the existing structure, and the changes could be applied without any violent upheaval. Boundary revision has been a county council function since the Local Government Act, 1929, and the securing of more efficient areas can be most usefully achieved through more stringent boundary revision. It is interesting in this connection to note that in a report issued at about the same time by the Society of Medical Officers of Health recommending a national medical and health service it is stated that few of the existing local authorities are sufficiently large to be able to provide complete health services, and that new local government areas will have to be devised in which not only population, but geographical and other considerations, will have to be taken into account. A permanent extension also of the present co-operation that exists between county councils on the lines of the provincial council set out in the report, should secure that measure of regional local government which is essential to future planning, while preserving the electoral and democratic character of the county and district councils.

Rent Control.

ONE of the proposed solutions of the problems raised by the Rent Acts and the increasing scarcity of housing accommodation is that rents should be fixed according to definite scales for different classes of accommodation, whether furnished or unfurnished. It is said that the complications of the interlocking Rent Acts resulting in difficulties in ascertaining and apportioning "standard rents," and the virtual impossibility in some cases of ascertaining whether a house is subject to 1920 Act control or 1939 Act control, would be completely abolished by a simple measure fixing rents or permitting rents to be fixed by committees with analogous functions to those of price regulation committees. The necessity of attempting to ascertain the history of a property sometimes for thirty years, and often for ten or fifteen years past, is well known to solicitors who appear in "possession cases" in the county courts, and many are the advocates who have sighed for something simpler than the present system. With regard to the rents of furnished houses, in a case reported in the *Estates Gazette* of 16th January as having been heard at Towyn Police Court, Merionethshire, on 1st January, by The Right Hon. LORD ATKIN and nine other magistrates, his lordship is reported to have said, when questions were put to an expert witness as to what would be a fair value, that one of the elements of the test would be what was deemed a fair rental in 1914. It is true that the 1939 Rent Act altered the definition of "normal profit" to "the profit which might reasonably have been expected from a similar letting on the 1st September, 1939," but it is right to point out that the question can only be investigated when sufficient attention is drawn to an individual case to enable it to be brought before the courts, and all the efforts of local authorities, however well meant, will not uncover the full measure of rent exploitation arising out of the scarcity of housing accommodation. There seems to be a case for a more rigorous rent fixation. Landlords, however, legitimately complain that rates, taxes, war damage contribution and other costs reduce the net return on their property to a nullity, and if rents are more stringently controlled it might be advisable, as a matter of equity if not of necessity, to consider the terms of a resolution put forward at a recent conference of the National Association of Real Estate Boards at St. Louis, Missouri, "that taxes and other costs in operation on business and residential property be frozen in accordance with the freezing of rents." The importance of the question of rent in the economic framework on which post-war reconstruction must be based cannot be over-emphasised, and, as Mr. B. SEEBOHM ROWNTREE says in the current *Fortnightly Review*, it is of fundamental importance to the realisation of the Beveridge plan. A committee, with power to investigate and recommend on the problem of the simplification of the law of rents of domestic accommodation, could do much useful basic work in preparation for the post-war era.

War Damage Payments and Estate Duty.

AFTER a lengthy correspondence between the Council of The Law Society and the Estate Duty Office, the Controller of Death Duties has given a statement of his views on questions of estate duty and the right to receive payments under the War Damage Act, 1941. These views are summarised in the **January** issue of *The Law Society's Gazette* and may be further summarised as follows: (1) Damage occurring after death is irrelevant to the question of value for estate duty purposes, which must be assessed as at death (Finance Act, 1894, s. 7 (5)). (2) No estate duty is due on value payments or payments under Pt. II of the Act if the deceased died before the Act came into force (26th March, 1941). (3) No estate duty is payable for a cost of works payment for repairs effected after death. The value, however, of damaged property is the purchase price thereof having regard to the probability of repayment for the cost of repairs by the War Damage Commission. Where the repairs were effected before death the cost of works payment should be included as a separate asset, and duty in respect thereof may be postponed until payment is received. (4) Estate duty is payable on the right to receive a value payment where the deceased died after 25th March, 1941, and the Inland Revenue affidavit should include (*a*) the value of the site and the ruined building; (*b*) the value of severed debris (as personalty); and (*c*) an estimate of the value payment (as personalty). The estate duty in respect of (*a*) if leasehold, and also of (*b*), must be paid on the Inland Revenue affidavit in any event. If the gross value of the property (other than settled property) liable to estate duty does not exceed £500 and it is intended to pay the fixed duty of 30s. or 50s., the estate duty in respect of (*a*) and (*c*) must also be paid on the affidavit. Otherwise the estate duty in respect of (*a*), or the first instalment thereof, must be either paid on the affidavit or on an account. Duty on an agreed value, as at the date of death, involving reasonable discount, may be paid on the Inland Revenue affidavit, or by arrangement at any later date. If the right to the value payment is sold, the duty should be satisfied when the sale takes place. In the ordinary case, where payment of duty is postponed until the value payment is received, either (i) it can be valued at the date of death, interest on the duty being charged, or (ii) its value can be taken as the amount actually received, interest being charged for the period from the date of the receipt to the date of payment of the duty, instead of from the date of death, as in (i). (5) In all cases an estimate of the value payment must be included in the affidavit for the purpose of aggregation. (6) The same rules apply to payments under Pt. II. (7) Payment of estate duty on value payments or payments under Pt. II may be deferred if (*a*) an undertaking is given to bring in an account and pay any additional duty in due course, and (*b*) an appropriate sum, related to the amount of the claim, is included for the purpose of aggregation.

Wills and Paper Economy

NEW recommendations with regard to the preparation of wills, which the Council of The Law Society feel will result in paper economy, are referred to in the **January** issue of *The Law Society's Gazette*. One of the recommendations is that members should use foolscap paper in the preparation of wills and codicils. The Council refers to the practice that has prevailed hitherto for the Probate Registry to require an engrossment copy of an original will or codicil where the original is drawn on brief-sized paper (Tristram and Coote, "Probate Practice" (18th ed.), at p. 83). This practice, it is stated, was introduced when photography of wills was introduced, because when a will on brief-sized paper is photographed direct and then reduced to the standard foolscap size of the photographic copies issued by the Registry there is naturally a reduction in the size of the writing. The practice has now been reconsidered at the Registry, and the Senior Registrar is of the opinion that, although the reduction in the size of the writing where direct photography is applied to documents on brief-sized paper is still a disadvantage, this is now outweighed by the advantages in dispensing with an engrossment copy. These advantages comprise the saving of paper, of work in solicitors' offices connected with the preparation of the engrossment copy, and of the examiners' time at the Registry in comparing the engrossment with the original. The mere fact that a will or codicil is drawn on brief-sized paper will no longer necessitate the lodging of an engrossment copy, but such a copy will still be required, whether the original is on brief-sized paper or not, where the original document is unsuited for direct photography, e.g., where alterations have not been properly set up. The views of the Council of The Law Society were asked before this change was made, and they gave their unqualified approval.

Claim of Right.

FROM a rather brief newspaper account of a prosecution at Liverpool on 30th December, 1942, it appears that the "claim of right" defence was raised to a larceny charge in interesting and unusual circumstances. A machine tool fitter was accused of stealing tools from the proprietors of a factory where he was employed. There was a further charge that "he did an act

having reasonable cause to believe that it would interfere " with work on essential services. He was acquitted on both charges. As many as nineteen witnesses for the defence testified that in the engineering industry men openly made tools at work in their spare time, and used scrap material for the purpose. These tools they regarded as their own. On behalf of the defendant it was stated that thousands of tools made in this way were being used in production work, and the defendant's solicitor asked what would have happened in badly equipped factories if such tools had not been in the fitters' kits. On the facts of the case there was held to be a complete answer to the charge under the emergency legislation. The interesting part of the case from the legal point of view is what appears to have been the defence to the charge of larceny. The material part of the well-known definition of " larceny " in s. 1 of the Larceny Act, 1916, is: " A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen . . . " The general rule is best stated in " Russell on Crimes " (1936, vol. II, p. 873), which, after laying down the general proposition that at common law " a man cannot commit a felony of goods wherein he has a property," states: " It is not larceny to take goods on a claim of right or property in them, if there is any fair pretence of property or right." VAUGHAN, B., in *R.* v. *Hall* (1828), 3 C. & P. 409, put the matter to the jury in this way: " if the jury thinks he took them under a *bona fide* impression that he was only getting back the possession of his own property, there was no *animus furandi*." The recent case of *R.* v. *Bernhard* (1938), 82 SOL. J. 257, may be remembered, in which the Lord Chief Justice's statement that it was rubbish to assert a claim of right so as to answer an allegation of stealing if the claim arose out of an immoral consideration was corrected by the Court of Criminal Appeal. In that case a demand for money was alleged to have been made contrary to s. 30 of the Larceny Act, 1916, and the defence claimed that it had been honestly believed to be due in respect of past cohabitation. CHARLES, J., in giving judgment in the Court of Criminal Appeal, said that if the matter were *res integra* there would no doubt be much to be said for the view which found favour with the Lord Chief Justice, that the words " claim of right " could not be read as including a claim which was unfounded in law. They were, however, bound by a long series of decisions to the effect that a person has a claim of right within the meaning of the section, if he is honestly asserting what he believes to be a lawful claim, even though it may be unfounded in law or fact. It is not very alarming that it should be possible to prove in such cases as that at Liverpool that workers are entitled to make tools and treat them as they did. If employers wish to modify a well-established trade practice they can do so by negotiation with the men or their union. If, on the other hand, they assert that the practice is damaging the war effort, this can be tested in the courts by preferring the appropriate charge under the emergency law. To say that the decision in the recent case will have repercussions in the engineering industry, as was stated in the course of the hearing, is no doubt correct, but those repercussions need not be unhealthy.

Recent Decisions.

In *Att.-Gen. of Alberta* v. *Att.-Gen. of Canada and Others*, on 1st February (*The Times*, 2nd February), the Judicial Committee of the Privy Council (LORD MAUGHAM, LORD RUSSELL OF KILLOWEN, LORD MACMILLAN, LORD ROMER and LORD CLAUSON) held that the Debt Adjustment Act, 1937, of Alberta, as amended in 1941, was not *ultra vires* the legislature of Alberta, as it was legislation in relation to insolvency, which was a class of subject within the exclusive legislative authority of the Parliament of Canada under s. 91 of the British North America Act, 1867.

In *Luccioni* v. *Luccioni*, on 2nd February (*The Times*, 3rd February), LORD MERRIMAN, P., refused an application for leave to dispense with service of a wife's petition for divorce for desertion on her husband, who was resident in enemy occupied territory, because in the case of petitions involving a change of status, and where any form of substituted service was impossible, the court, before dispensing with service, should require to be satisfied that the respondent spouse had become aware that the petition was being prosecuted, or at least, of the intention to prosecute it, and in either case had time or opportunity to indicate whether he or she desired to defend.

In *Re Blackett-Coutts & Co.* v. *Sharp and Others*, on 3rd February (*The Times*, 4th February), UTHWATT, J., held that a gift of residuary estate to the Portsmouth Garrison Church for the augmentation of the salaries of the chaplains was a valid charitable bequest, but that as the gift was too specific for any general charitable intent to be shown, it was at that moment impracticable to carry the testator's gift into effect.

In *Carltona, Ltd.* v. *Commissioners of Works and Others*, on 3rd February (*The Times*, 4th February), HILBERY, J., held that the requisitioning of a factory for storage purposes under reg. 51 (1) of the Defence (General) Regulations was an administrative act of the competent authority, into the reasonableness of which the court could not inquire.

A Conveyancer's Diary.

Bowring-Hanbury's Case.

IN the " Diary " of 25th April, 1942, I gave some account of *Bowring-Hanbury's Trustee* v. *Bowring-Hanbury* [1942] Ch. 276, which had then recently been heard by Bennett, J. The case had been treated as one turning on the sufficiency of an acknowledgment for the purpose of taking a debt out of the Statutes of Limitation. While fully accepting all the reasoning on this question, I ventured to suggest that there was another point which had not been raised before the learned judge and which might well alter the decision. That point has now been raised and fully argued in the Court of Appeal, who rejected it. A transcript of the shorthand note of the judgment of the court (now reported at [1943] W.N. 22) is before me, and I take this opportunity of stating that I am satisfied that the point suggested in my former article was wrong. I am glad, however, that the case did go to the Court of Appeal, because it has brought forth an illuminating judgment of general interest.

The material facts were these: in 1924 B lent £10,000 to his wife. In June, 1929, she repaid £1,000 of it. There was no further payment of capital or interest, so that time clearly ran from June, 1929, unless there was an acknowledgment. Bennett, J., and the Court of Appeal were unanimous that there had been no acknowledgment, and that part of the case need not be pursued. In March, 1931, Mrs. B died, leaving B as her sole executor. In March, 1935, B went bankrupt without ever having repaid himself anything on account of the loan. In July, 1936, over seven years after time had started to run, B's trustee in bankruptcy brought the action against B in the latter's capacity as Mrs. B's executor claiming the £9,000. In the absence of acknowledgment the action was obviously out of time unless, as the plaintiff contended in the Court of Appeal, the running of time was suspended during the four years while B was himself both creditor in his own right and debtor as his wife's executor.

The judgment of the Court (Lord Greene, M.R., Lord Clauson and du Parcq, L.J.) was read by Lord Clauson. After referring with approval to the decision of Bennett, J., on the acknowledgment point, his lordship dealt at length with the question of " suspension." He first stated that it was clear that there is nothing in the Limitation Act, 1623 (which was the relevant statute, and in this matter does not differ from the Limitation Act, 1939), to cause this suspension; but it had been contended that it was settled by *Seagram* v. *Knight*, L.R. 2 Ch. 628, an authority binding on the court, " that the operation of the Limitation Act might be ' suspended ' under the proper circumstances, and that the circumstance that there was only one hand to pay and to receive would be such a circumstance."

Lord Clauson then recalled that as long ago as 1661 it had been decided in *Prideaux* v. *Webber*, 1 Lev. 31, " that where time had begun to run, it continued to run, and that there was no warrant for excluding from the period of limitation a space of time when, owing to the closing of the courts, no action could be brought." He proceeded: " This decision appears to me to have been based on the view that the words of the Act governed the matter, and that the absence of any exception in the Act of a space of time when no action could in fact be brought was fatal to the suggestion that such an exception existed." Having referred to one or two later cases where *Prideaux* v. *Webber* had been approved, he said: " These decisions would seem to make it difficult to read into the Act an exception of a space of time where no action could be brought because there was one hand only both to pay and to receive."

His lordship then went on to refer to *Rhodes* v. *Smethurst* (1838), 4 M. & W. 42, where it had been held that there cannot be excluded from the period the space of time when a creditor cannot sue owing to the death of the debtor and a delay in constituting a personal representative. He then read a passage from the judgment of the Court of Appeal in *Re Benzon* [1914] 2 Ch. 68, where it was stated that the rule is that time runs continuously and that *Seagram* v. *Knight* is the only contrary decision.

The question for decision thus was whether the exception to the general rule created by *Seagram* v. *Knight* was wide enough to cover the present case. It was thus necessary to analyse *Seagram* v. *Knight* in some detail. " The material facts were that from 1830 the grandfather, W.F.S., was tenant for life of certain freeholds, with remainder to the father, W.L.S., in fee. The grandfather cut certain timber in 1831 while the father was still under age (in circumstances which, in the opinion of the Master of the Rolls, made the cutting a wrongful act) and treated the proceeds as his own. In 1842, 1843, and March, 1844, the grandfather again cut timber wrongfully. In April, 1844, the father died intestate, leaving the grandson (the plaintiff) then an infant, as his only son and heir. The grandfather took out administration to the father, *durante minore aetate* of the grandson, and after the death of the father cut further timber wrongfully. In November, 1864, the grandfather died. In March, 1865, the grandson (the plaintiff) came of age, and in March, 1866, having taken out administration to the father, filed a bill against the executor of the grandfather for an account

of all moneys received by the grandfather in respect of timber cut on the land during the life of the father and since the death of the father." Romilly, M.R., decided that the statute had run from as long ago as the date when the father attained twenty-one, so that the claim in respect of timber cut in 1831 was barred. He also decided that there was an implied settlement of the proceeds of the cuttings in 1842, 1843 and March, 1844, which debarred a claim in respect of them.

The grandson took the case to Lord Chelmsford, L.C., on appeal, where the point was taken that for a long time there had been the same hand to give as to receive. Reliance was placed on *Burrell* v. *Egremont*, 7 Beav. 205, which deals with limited owners' charges, and *Wynney* v. *Styan*, 2 Ph. 303, which "seems only to be relevant in recognising the principle that where a mortgagee is in receipt of the rents of the mortgaged estate, the Limitation Act does not run against the mortgage charge; that is to say, that in such circumstances the mortgagee must for the purposes of the statute be treated as receiving interest on the mortgage." *Seagram* v. *Knight*, however, was a case depending on the question in whom the legal estates were vested. The Lord Chancellor dealt with it on the footing that the cuttings were wrongful; he held that the claim in regard to the 1831 cutting was barred, the remedy being one either in trover or in an action for money had and received, so that the period was six years. As regards the cuttings in 1842, 1843, and March, 1844, he did not agree that the proceeds had been settled; but he "quite clearly held that the operation of the statute had been suspended as from the time when the grandfather became the administrator of the father, and the same hand, viz., that of the grandfather, was the hand to pay (as the hand of the tortfeasor) and the hand to receive was the hand of the personal representative of the remainderman who had suffered by the tort." *After* judgment, reference was made to *Rhodes* v. *Smethurst*, and the Lord Chancellor disclaimed any intention of overruling that case. "He seems, however, to have satisfied himself that it was to be deduced from *Netham's Case*, 8 Rep. 135*a*, and *Wankford* v. *Wankford*, 1 Salk. 299, that "the statute might well be, and was to be, treated as suspended by the fact that the debtor became the administrator of the creditor."

Lord Clauson said that this decision was binding on the Court of Appeal, whether or not it would be upheld by a court not so bound. But he said that the Court of Appeal took the view that *Seagram* v. *Knight* was to be construed as indicating that *Rhodes* v. *Smethurst* "was rightly decided in so far as it recognises the general principle that a space of time during which it is impossible to sue for a debt is not to be excepted from the six years' period," but that "in the special case where the impossibility is due to the fact that the debtor has become the creditor's administrator the rule is otherwise." Thus treated, the decision in *Seagram* v. *Knight* "is an authority against and not for the correctness of the argument put forward by the plaintiff in the present case, that the space of time during which the creditor was (and indeed still is) the executor of the debtor is to be excepted from the period of six years laid down by the statute."

Finally, his lordship pointed out that *Seagram* v. *Knight* was a case where the debtor "was the administrator, not the executor, of the creditor," and that the Lord Chancellor had "based his decision narrowly upon this fact, citing *Wankford* v. *Wankford*, where a distinction is drawn by Powell, J., between the case of a debtor administrator and that of a debtor executor." In the case of a creditor executor the debt is not extinct, "but only on the supposal that the executor has assets which he may retain himself," which "supposal" did not arise in *Bowring-Hanbury's* case.

The position thus seems clear. The ordinary rule is that time runs continuously once it has started to run. There is one authority—*Seagram* v. *Knight*—for suspension, but it stands alone; it is one which can be challenged in the House of Lords. The exception thus created (unless it is overruled altogether by the House) is confined to the single class of facts for which it was established, viz., that of a debtor administrator. It is not a decision of general principle and there is no authority for so construing it. Thus, there is no suspension for the case of a debtor executor, or a creditor executor, or a creditor administrator. It should be added that the group of cases where the income arising from a mortgage is payable to the mortgagor as life tenant of the mortgage debt has no application to cases of the *Bowring-Hanbury* class, since it depends on notional payments, which do not arise in the latter sort of case. And, incidentally, this group of mortgage cases is no authority for "suspension"; that word must imply that the period has partly run before the "suspension," and that at the end of the "suspension" it resumes its course at the point where its running temporarily ceased, so that to ascertain the total period one has to count the space that has run before the "suspension." In the mortgage cases there are notional payments, so that time must be deemed to start running afresh as from the date of the last such notional payment. Thus, one could not count at all the space of time that had run before the notional payments began. That is not "suspension" on an exact appreciation of the word.

It is to be hoped that the Court of Appeal's very full exposition of the narrow scope of the doctrine in *Seagram* v. *Knight* will be decisive in clearing up an obscure corner of the law. The judgment is also of importance for the resounding approval which it gives to *Prideaux* v. *Webber* and the other cases which establish the rule that time runs continuously. This is a rule of cardinal importance, not only in the present connection. *Prideaux* v. *Webber* was concerned with the effects of the English Civil War on the limitation of actions, and it is well to have it freshly established that it is not obsolete; for we shall no doubt have to consider before long the effects of the present war on the same point.

Landlord and Tenant Notebook.

"A Substantial Portion of the Whole Rent."

THE above words occur in s. 10 (1) of the Rent, etc., Restrictions Act, 1923, and both the question whether the section applied and the question what the words meant if they did apply were raised in the course of the county court case which I discussed, as regards the main issue, in the "Notebook" of 30th January last (87 SOL. J. 37), "Built-in Furniture and the Rent Acts."

The flat which was the subject-matter of the proceedings was one of a block built in 1933 and the term under which it had been let had commenced on 11th October, 1940. The defendant's case was that control was effected by the 1939 Act, and the plaintiff took the point that, owing to the repeal provisions of that statute, she need not satisfy the court that the amount of rent fairly attributable to the use of the furniture formed a substantial portion of the whole rent.

While the findings and rulings of the court on other points made decision unnecessary, a short review of the position may not be out of place.

Premises let furnished were excluded by s. 12 (2) (i): "this Act shall not . . . apply to a dwelling-house bona fide let at a rent which includes payments in respect of . . . use of furniture." The introduction of a commodity which became known as "Rent Act lino" occasioned the passing of s. 10 (1) of the 1923 Act, which, more fully set out, runs: "For the purposes of proviso (1) to subsection (2) of section twelve of the principal Act . . . a dwelling-house shall not be deemed to be bona fide let at a rent which includes payments in respect of . . . the use of furniture unless the amount of rent which is fairly attributable to the . . . use of the furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent." Now the 1939 Act applies, by s. 3 (1), the principal Acts to houses within specified rateable values, but does so "subject to the provisions of this section"; and the second subsection contains merely the following: "The principal Acts shall not, by virtue of this section, apply . . . (*b*) save as is expressly provided in the said Acts . . . to any dwelling-house bona fide let at a rent which includes payments in respect of . . . use of furniture."

The argument was that as the last-mentioned provision said nothing about that of s. 10 of the 1923 Act, the position was what it had been before the latter was passed; i.e., when it was held, in *Wilkes* v. *Goodwin* [1923] 2 K.B. 86 (C.A.), that the amount of furniture was immaterial provided the letting was *bona fide*.

It was because the learned judge found and considered that the amount of rent attributable to the use of furniture was substantial in any event, that he did not decide the point of repeal or otherwise; but his honour did observe: "I incline to the view that the purpose and intention of Parliament was to apply to all dwelling-houses brought within specified rateable values, leaving out those which came within certain categories of exemption *in all respects* as in the previous Acts, such categories being briefly stated without the intention of modifying them. A similar difficulty arose with regard to the language of s. 2 (1) and s. 16 (1) of the 1933 Act, and I would refer to the judgment of Slesser, L.J., in *Brooks* v. *Brimecombe* [1937] 2 K.B. 675, which, I think, gives support to this view."

On this, it may be said that speculation about the purpose and intention of the Legislature is indeed likely to lead to this conclusion: having stopped up the "Rent Act lino" loophole left by the 1920 Act, Parliament can hardly have consciously meant, when extending control to a new class, the "1939" class, to have provided the old means of escape. But it does look as if it had done what it did not intend to do. For the extending provisions, contained in s. 3 (1) of the 1939 Act, expressly state that the provisions of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1923, set out in the first column of Sched. I, shall have effect as if there were made in those provisions the modifications respectively prescribed by that schedule. Turning to Sched. I, we find that the first column mentions s. 12 of the 1920 Act, the modification in the second column being "Subsection (2) shall not apply"; it further mentions s. 10 of the 1923 Act, the appropriate modification being "In subsection (1) the reference to proviso (i) to subsection (2) of section twelve of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, there shall be *substituted* a reference to paragraph (*b*) of subsection (2) of section three of this Act."

So this all leads us back to the unqualified provision set out at the end of the fourth paragraph of this article and the proper

conclusion appears to be that, whatever Parliament meant or would have meant, s. 10 (1) of the 1923 Act does not affect lettings of 1939 controlled houses. With respect to the learned judge, I suggest that in *Brooks* v. *Brimecombe*, *supra*, the *ratio decidendi* was that a later statute did not take away rights and a status acquired under an earlier one, and there would be no occasion to apply this principle to the case before him.

Another interesting point dealt with was this: what, when the landlord pays the rates, is "the whole rent" of which (assuming that s. 10 (1) of the 1923 Act applies) the amount of rent fairly attributable to the use of the furniture is to be a substantial portion? The finding of the learned judge was that the annual value of furniture was £20. The rent reserved by the agreement was £78 per annum inclusive. Payment of rates left a net rent of £54 9s. The learned judge considered that in any event the £20 was a substantial portion, but pointed out that it was clearly intended that out of the £78 the plaintiff was to pay the rates which otherwise defendant would have to pay direct to the local authority. "It would be a curious anomaly, if one flat had been let at £54, the tenant to pay rates, and a similar flat at £78, landlord to pay rates, that two different criteria should be required by the Act in deciding the question of substantiality."

To uphold this view it would be necessary to distinguish *Rousou* v. *Photi, Gort Estates Co.* (*Third Party*) [1940] 2 K.B. 379 (C.A.), in which the Court of Appeal recognised the existence of such an anomaly in the case of "rent not exceeding £40" in the Housing Act, 1936, s. 2 (1) (landlord's liability for repairs), but considered that there was no justification for dissecting the contractual payment and attributing part of it to what was called the annual value of the house and the rest of it to rates. And if it be said that for other purposes the Rent Acts themselves provide for such dissection, that is an argument which cuts both ways.

My last comment is this: it seems open to question whether the learned judge was (assuming s. 10 (1) of the 1923 Act to be applicable) right in assessing the "portion" by reference to "annual values" without at least making it clear that in the case before him the "annual value" of the furniture happened to be identical with "the value of the same to the tenant" as demanded by the subsection. It was, after all, an unwanted piece of linoleum that was the decisive furniture in *Wilkes* v. *Goodwin*, *supra*, which was the occasion for the passing of the subsection.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Husband and Wife—Joint purchases—Estate Duty.

Q. A husband and wife purchased a house, and also some War Loan in their joint names. The wife died and a question arises, what estate duty is payable in respect of the two items, and is the answer affected by whether the fund to purchase was found by the husband or by the wife?

A. It will be appreciated that the questions asked involve complexities which it is not possible to go into completely in a brief reply. Our subscriber will find the whole subject dealt with on p. 47 *et seq.* of the 9th edition of Dymond's Death Duties.

I. *As to the house.*

(*a*) If the husband provided the whole price and it was conveyed to them as joint tenants *simpliciter*, when there would be a presumption, capable of being rebutted, that the wife was advanced, or if it was conveyed to them as joint tenants "beneficially," so that a genuine joint tenancy was created in equity, then estate duty would be payable on a moiety.

(*b*) If the wife provided the whole price (out of her separate estate) and the property was conveyed to them as joint tenants *simpliciter*, there would be no question of advancement, and a genuine joint tenancy in equity not being created, estate duty would be payable on the whole. If the conveyance was to them "beneficially" and a genuine joint tenancy created in equity, then if the wife survived the purchase by three years estate duty would only be payable on a moiety.

II. *As to the War Loan.*

(*a*) If the husband paid the whole price and had all the dividends there would be no claim for estate duty on the death of the wife.

(*b*) If however the husband paid the whole price, but the dividends were equally shared and a genuine joint tenancy created, then, there would be a claim for estate duty on a moiety.

(*c*) If the wife paid the whole price and had all the dividends, estate duty would be payable on the whole value.

(*d*) If the wife paid the whole price but the dividends were equally shared and a true joint tenancy created, then, if the wife did not survive her purchase by three years, duty would be payable on the whole, but if she did so survive then on a moiety only.

At the monthly meeting of the directors of the Solicitors' Benevolent Association held at 60, Carey Street, W.C.2, grants amounting to £1,113 5s. were made to twenty-seven beneficiaries.

To-day and Yesterday.

LEGAL CALENDAR.

8 February.—In 1774 Lincoln's Inn was disputing with the parish of St. Clement Danes over its liability for rates, and on the 8th February the committee appointed to examine the matter made its report on the evidence of Thomas Grint, the steward. He said that the Society was "entrusted with the education of young gentlemen studying the law and is regulated and governed by the benchers thereof." "The limits and bounds of the Inn are lighted, watched and cleansed by the direction and at the expense of the benchers." "Persons belonging to the Society have many times been relieved out of the General Fund of the Society . . . and the witness never knew any of the officers or servants of the Inn applying for relief and being refused." "The gates of the Inn are shut at eleven o'clock every night and he never knew the Constable of the Night or the Watchman demand an entrance for search of vagrants or exercise any jurisdiction in the Inn after the gates were once shut; neither did he ever know the parochial beadles come into the Inn in the day time to take up vagrants or beggars."

9 February.—In 1828 there was a great stir when the House of Commons debated the conduct of Sir John Nicholl, judge of the prerogative court of Canterbury in a probate case in which the costs had reached alarming proportions. The complaints against him were shown to be without foundation, but the matter did not end there, for in the course of the debate Dr. Lushington, the eminent advocate and civilian, afterwards a judge, who was then an active member of Parliament, referred to Mr. Walker, the attorney of the party to the case principally affected, as "a pettifogging attorney who has been guilty of perjury and attempted extortion." A report of this speech having been published in a journal called "The Mirror of Parliaments," Mr. Walker brought an action for libel against the printers and publishers, joining Dr. Lushington as a defendant on the ground that he had corrected the proofs. The case was heard in the King's Bench on the 9th February, 1831. For Dr. Lushington the point was made that though there was evidence that the proofs had been sent to him there was none that "if they went sealed to his chambers, crowded as those chambers were with the papers of his numerous clients, that they did not return into the hands of the printers sealed up in the same manner, never opened and never corrected by him." A verdict was entered for him, but £50 damages were awarded against the other defendants.

10 February.—On the 10th February, 1668, Pepys noted that the House of Commons voted that the King should be desired "that the laws against breakers of the Act of Uniformity should be put in execution: and it was moved in the House that if any people had a mind to bring any new laws into the House about religion they might come, as a proposer of new laws did in Athens, with ropes about their necks."

11 February.—The next day, the 11th February, Pepys went to consult counsel over some legal business: "To Pemberton's chamber. It was pretty here to see the heaps of money upon this lawyer's table; and more to see how he had not since last night spent any time upon our business, but begun with telling us that we were not at all concerned in that Act; which was a total mistake, by his not having read over the Act at all." Pemberton was then an eminent junior who eleven years later became a judge and was afterwards Lord Chief Justice.

12 February.—On the 12th February, 1793, the Rev. Richard Burgh, formerly chaplain to the Duke of Leinster, Captain John Cummings, a former army officer, Townley M'Can, a law student, James Davis and John Bourne were brought up for judgment in the Court of King's Bench. They were debtors confined in the King's Bench Prison, and they had been convicted of conspiring to blow up part of the walls and escape. The plan was to place a box containing fifty pounds of gunpowder in a convenient drain. They raised the money to buy it by means of a 5s. subscription in "The Convivials," a club organised among the debtors, under pretence of obtaining counsel's opinion whether the marshal might enter their rooms whenever he pleased. They had fixed a day and arranged to draw off the prisoners from the scene of the explosion by staging a fencing match between M'Can and Bourne, but the plot was discovered. All were sentenced to three years' imprisonment in different prisons.

13 February.—On the 13th February, 1933, a remarkable trial began at Liverpool. It was the longest in the history of the Assizes there, lasting till the 23rd March. The indictment contained seventy-five counts, one of which charged four of the prisoners with "conspiring falsely to move pleas," contrary to a statute of Edward I passed in 1305. Three of them were found guilty and received sentences of five years, three years and eighteen months respectively. They had committed the oldest statutory crime of recent times.

14 February.—On the 14th February, 1784, "was tried at Guildhall a cause of great commercial consequence. A sailor brought an action against his captain for an assault on board a privateer. It appeared that the plaintiff had been detected in theft, for which the captain had ordered him twelve lashes. His

counsel insisted that the law had vested no power in the captain of a ship to punish for felony; he ought to have been delivered over to the civil power to have been prosecuted. On the side of the defendant it was argued that the captain in the particular situation in which he stood on the high seas had no other means left than the ordinary discipline of the ship, and that if petty offenders were not to receive correction there could be no such thing as navigating any vessel on the high seas. The learned judge concurred in the justice of the plea and blamed the person who advised such action, but recommended to the jury to give such damages as they in their consciences thought the plaintiff deserved." They gave him one shilling.

PUT TO THE PROOF.

The House of Lords was recently considering the case of a woman claiming damages for injury caused through drinking from a bottle of mineral water, said to have contained a harmful chemical. Some of the men employed by the manufacturers had tasted the contents, and the Lord Chancellor recalled a story of one of the most eminent advocates of his day who early in his career was appearing for a fruit merchant sued by a costermonger in respect of some figs sold to him and alleged to be unfit to eat. The judge proposed that counsel should eat some as a test, but counsel suggested that the defendant might like to make the demonstration. "What will happen if I don't?" whispered his client. "I'm afraid you will lose," was the answer. "Then I've lost," said the defendant. Counsel in the case was Rufus Isaacs, the future Lord Reading. It is recorded that Tim Healy did once make the gesture of a personal demonstration in court. He was appearing for the defendant in an action for the pollution of a stream, and his case was that it was absolutely pure and undefiled. In the course of his speech he suddenly startled the court with the exclamation: "They say the water is polluted! My lord, look at it! There is a sample." Then drawing from his pocket a bottle, he uncorked it and swallowed the contents, adding, with great solemnity: "The first drink of water I have had for many a year."

Our County Court Letter.

Right of Support.

IN *Bishton* v. *Ten Acres and Stirchley Co-operative Society*, at Bromsgrove County Court, the claim was for £70 special damage (viz., the cost of shoring up a building), £120 general damages (viz., the diminution in value of the property), and for an injunction. The plaintiff's case was that she had purchased No. 28, Worcester Street, in October, 1928, when the property enjoyed a right of support from an adjoining row of cottages. The latter had been demolished by the defendants, as owners, in pursuance of a slum clearance scheme. The result was to withdraw the support from the plaintiff's property, which had to be shored up to prevent collapse. Holes had also appeared in the interior wall, and the plaintiff's tenant had left, owing to the exposure to the weather. The plaintiff's property and the cottages had been in common ownership (as shown by the deeds) from 1731 to 1757 and again in 1864. A photograph, taken forty years ago, also showed the properties as having a continuous frontage. The dividing wall was a party wall until the defendants demolished it in 1939. In the alternative, the plaintiff had acquired a prescriptive right of support. The defendants' case was that the bulge in the plaintiff's wall (necessitating the shoring up) was not due to the demolition, but to the perishing of the joints in the underpinning. The lower plate was also not fastened to the uprights of the wooden frame. The plaintiff's property had stood without support from the cottages, and the dividing wall was not a party wall. There was also no right of support derived from the common ownership. His Honour Judge Roope Reeve, K.C., held that the plaintiff had acquired a right of support under the Prescription Act. Mutual support was essential, as between the plaintiff's property and the defendants' cottages. Owing to the lapse of time, since the demolition, the plaintiff could not claim an injunction. Judgment was nevertheless given in her favour for £40 damages, with costs.

Hairdresser and Customer.

IN *Roberts* v. *Pinder*, at Lincoln County Court, the claim was for damages for negligence. The plaintiff's case was that she had had her hair dyed by the defendant's assistant, who had not applied the usual preliminary test. The result was that the plaintiff had contracted dermatitis in the head and face, as the dye was harmful to the plaintiff's skin. The defence was that the plaintiff originally ordered a permanent wave. During the steaming, she asked for her hair to be dyed. In answer to the assistant's query, the plaintiff stated that she had previously had her hair dyed with the same preparation, without ill-effects. By her conduct, the plaintiff had absolved the assistant from the obligation of making a test. No complaint had been made of the dye running down the plaintiff's face. Judgment was given for the defendant, with costs.

Books Received.

The Yearly Practice of the Supreme Court. Supplement, 1943. By P. R. SIMNER, C.B., Master of the Supreme Court of Judicature, HAROLD KING, of the Inner Temple, Barrister-at-Law, H. HINTON, M.B.E., of the Supreme Court, F. C. ALLAWAY, M.B.E., of the Chancery Division, EDWARD F. IWI, Solicitor. pp. xlvi, 408 and (Index) 28. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

The Gold Collar of SS and The Trial of the Pyx. By Sir GEORGE BONNER, late Senior Master of the Supreme Court and King's Remembrancer. 1943. pp. 20. London: Wildy & Sons. 1s. net. (The entire proceeds of the sale of this book will be handed over to the Barristers' Benevolent Association.)

Tax Cases. Vol. XXIV. Parts II and III. London: H.M. Stationery Office. 1s. net.

The Annual Charities Register and Digest. Fiftieth Edition. 1943. Demy 8vo. pp. vi and 493. London: Longmans, Green & Co., Ltd. 8s. 6d. net.

Obituary.

FLIGHT-LIEUT. E. V. STANLEY JONES.

Flight-Lieut. E. V. Stanley Jones, solicitor, of Messrs. Nee and Stanley Jones, solicitors, of Caernarvon, lost his life in a recent flying accident. He was thirty-five years of age and was admitted in 1933. In 1934 he was elected a member of the Caernarvon Town Council and served as deputy mayor for three years.

Parliamentary News.

ROYAL ASSENT.

The following Bills and Measures received the Royal Assent on the 4th February:—

Consolidated Fund (No. 1).
Crown Lands.
Minister of Town and Country Planning.
Workmen's Compensation.
New Parishes Measure, 1943.
Episcopal Endowments and Stipends Measure, 1943.

HOUSE OF LORDS.

Police (Appeals) Bill [H.C.].
Read First Time. [9th February.

HOUSE OF COMMONS.

Agriculture (Miscellaneous Provisions) Bill [H.C.].
British Nationality and Status of Aliens Bill [H.L.].
Read First Time. [3rd February.
Catering Wages Bill [H.C.].
Read Second Time. [9th February.
House of Commons Disqualification (Temporary Provisions) Bill [H.C.].
Read First Time. [4th February.
Universities and Colleges (Trusts) Bill [H.C.].
Read Second Time. [4th February.

THE LAW SOCIETY'S SCHOOL OF LAW.

Since the outbreak of war oral lectures and classes in subjects for the Society's Final Examination have not been held at the Society's school, although correspondence courses have been continued.

The council are now able to arrange for the resumption of such oral classes provided that sufficient students attend to justify their being held. They will accordingly be glad if any students who would wish to attend oral classes would, at an early date—and in any event before 22nd March, 1943—communicate with the Secretary to the Principal at The Law Society's Hall.

The council tentatively propose to hold oral classes as follows:—

Summer Term, 1943: (*a*) Property and Conveyancing and Bills of Sale; (*b*) Sale of Goods, Hire Purchase and Evidence.

Autumn Term, 1943: (*a*) Equity and Partnership; (*b*) Negotiable Instruments, Insurance and Arbitrations and Awards.

Spring Term, 1944: (*a*) Conflict of Laws; (*b*) Probate, Death Duties and Divorce.

Summer Term, 1944: (*a*) Contract; (*b*) Company Law and Bankruptcy.

Autumn Term, 1944: (*a*) Tort (so far as is necessary for the new Final); (*b*) Agency, Master and Servant.

Spring Term, 1945: (*a*) Criminal Law and Proceedings before Magistrates other than at Quarter Sessions; (*b*) Income Tax Law.

This suggested programme has not been finally fixed and will be adapted to meet the needs of intending students. It does not include classes in Local Government Law, but these will be provided if there is a demand for them.

There would be weekly classes lasting about one and a half hours, in each of the two subjects offered each term. These would be held at whatever hour during the afternoon proved most convenient for the majority of students attending—probably between 3.30 p.m. and 5.30 p.m.

Members whose articled clerks might be able to attend are particularly requested to direct such clerks' attention to this notice.

Notes of Cases.

CHANCERY DIVISION.

The Attorney-General *v.* Leicester Corporation.

Bennett J. 21st December, 1942.

Local government—Corporation—Agreement by corporation to purchase goodwill of omnibus undertaking—Validity of agreement—Resolution for payment out of reserve fund—Ultra vires—Municipal Corporations Act, 1882 (45 & 46 *Vict. c.* 50), *s.* 140—*Leicester Corporation Act*, 1930 (20 & 21 *Geo.* 5, *c. clxxxiv*), *ss.* 45, 47—*Road Traffic Act*, 1930 (20 & 21 *Geo.* 5, *c.* 43), *ss.* 101, 103—*Local Government Act*, 1933 (23 & 24 *Geo.* 5, *c.* 51), *ss.* 185, 186, 187.

Witness action.

The Leicester Corporation had under its special Acts certain limited powers of running omnibus services. By a conditional agreement dated 20th February, 1939, the corporation agreed to purchase from H six omnibuses and the goodwill of the omnibus service which H was running from a point within the city boundary to a village outside it. The purchase price was £12,714, of which £11,718 was payable for goodwill. The running of this omnibus service was not authorised by the corporation's special statutory powers. By a resolution of the 28th March, 1939, the city council resolved that the purchase price should be paid out of the borough's reserve fund. In this action the relators, an omnibus company running a service of omnibuses over the same route as that operated by H and ratepayers of the borough, sought declarations, first, that the agreement was *ultra vires* the corporation, and, secondly, that the corporation were not entitled to apply any part of the reserve fund or any other fund of the ratepayers of the borough for the purposes of such purchase and ancillary injunctions.

BENNETT, J., said that, as the defendant corporation were constituted by royal charter, they could do anything that an ordinary individual could do (*Attorney-General* v. *Leeds* [1929] 2 Ch. 291). However, until the Local Government Act, 1933, came into operation, the spending powers of such a corporation were restricted by the Municipal Corporations Act, 1882, s. 140. The plaintiffs contended that upon the true construction of the Road Traffic Act, 1930, there must be read into s. 103 of that Act, which authorised a corporation running an omnibus service to incur certain expenditure, a prohibition against the expenditure of money on any other purposes (*London Association of Shipowners and Brokers* v. *London and India Docks Joint Committee* [1892] 3 Ch. 242). When that Act was passed the Municipal Corporations Act, 1882, was in full operation, and by s. 140 of that Act the corporation was forbidden to spend any of the borough fund in running public service vehicles outside the borough. So long, therefore, as the Act of 1882 was in force it was unnecessary to read into s. 103 of the Act of 1930 a prohibition against the spending of money on any purposes not authorised by that section as that prohibition already existed in s. 140 of the Act of 1882. Since the repeal of subss. (2), (3) and (4) of s. 140 by the Local Government Act, 1933, the only ban against making the expenditure had been removed. Section 185 (1) of that Act gave the corporation power to make this expenditure out of the general rate fund of the borough, and the corporation had power, as a corporation incorporated by royal charter, to enter into the agreement of 20th February, 1939. The plaintiffs were not entitled to the first declaration which they sought. The corporation had resolved to discharge the purchase-money out of the reserve fund. That fund could only be applied for the purposes authorised by s. 47 (3) of the Leicester Corporation Act, 1930. It was a question of fact whether this application of the reserve fund was authorised. In his opinion the corporation had failed to establish any ground upon which they could lawfully use the reserve fund for this purpose. The second declaration which the plaintiffs claimed was too wide, but they were entitled to a declaration that the corporation were not entitled to use the reserve fund for this purpose.

COUNSEL: *Craig Henderson*, K.C., and *H. L. Parker*; *Romer*, K.C., and *J. P. Stimson*.

SOLICITORS: *Sydney Morse & Co.*; *Field, Roscoe & Co.*, for *L. McEvoy*, town clerk, Leicester.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Thompson and Cotterell's Contract.

Uthwatt, J. 11th January, 1943.

Vendor and purchaser—Agreement for sale of "underlease"—Head lease disclaimed on bankruptcy of lessee—Whether title to underlease good—Bankruptcy Act, 1914 (4 & 5 *Geo.* 5, *c.* 59), *s.* 54.

Vendor and purchaser summons.

By a contract dated the 15th October, 1941, T agreed to sell and C to purchase for £440 certain premises held under an underlease for a term of ninety-nine years less three days from the 29th September, 1928, at a rent of £5. Completion was to take place on the 12th November, 1941. It was provided that the title should begin with the underlease. When the vendor sent his completion statement, he sent with it a notice of disclaimer dated the 21st May, 1937. The head lessee having been adjudicated a bankrupt, his trustee had duly disclaimed the head lease in exercise of the power conferred by s. 54 of the Bankruptcy Act, 1914. The purchaser refused to complete, contending that the disclaimer of the head lease made the vendor's title to the underlease defective. The vendor took out this summons asking for a declaration that the objections of the purchaser in respect of the title had been sufficiently answered. Section 54 (1) authorises a bankrupt's trustee to disclaim any land burdened with onerous covenants. Subsection (2) provides: "A disclaimer shall operate to determine . . . the rights, interests and liabilities of the bankrupt . . . in respect of the property disclaimed . . . but shall not, . . . affect the right or liabilities of any other person."

UTHWATT, J., said that the question was whether the interest which was agreed to be sold could be rationally described as an underlease. The answer to that question necessitated a consideration of s. 54. It was clear that the effect of the disclaimer was limited to determining the rights and liabilities of the bankrupt and the rights against third parties, except in so far as necessary for releasing the bankrupt and trustee, remained on foot. In *In re Finlay*, 21 Q.B.D. 475, Lord Lindley had worked out, to a certain extent, what was the position of a lease which had been disclaimed. When he came to consider the position between the original lessor and the sub-lessee, he put it in this way: "Now their rights and liabilities are preserved by subs. (2) and, subject to the effect of a vesting order, whatever that may be, the case will stand in this way: the sub-lessee, although freed from his covenants to his own immediate lessor, must perform the covenants of the original lease, or he will be liable to be distrained upon and to be ejected by the original lessor." A disclaimed lease had not disappeared for ever; it had an operation. It was impossible to treat the case as if the lease did not exist. In these circumstances was it accurate to describe the instrument which had been carved out of the lease, while it was active, as an underlease? It appeared to him that the interest agreed to be sold as an underlease was in fact an underlease. Accordingly, the vendor had shown a good title.

COUNSEL: *Baden Fuller*; *Sir Norman Touche*.

SOLICITORS: *Ward, Bowie & Co.*, for *Duggan, Elton & James*, Birmingham; *Kenneth Brown, Baker, Baker*, for *D. R. W. Stevenson, Squires & Co.*, Cambridge.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Goodson; Goodson *v.* Goodson.

Uthwatt, J. 13th January, 1943.

Settlement—Construction—Annuities payable—Each annuitant to be entitled to enjoy her annuity free from income tax—Whether annuities payable free of tax—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *All Schedules Rules, rr.* 19, 23.

Adjourned summons.

By a settlement dated the 24th November, 1925, after reciting that the settlor had transferred certain shares to the trustees, it was provided by cl. 3 that the trustees should stand possessed of part of the trust fund to the use that they should out of the income thereof pay the following annuities, to be a first charge thereon, to commence from the death of the settlor, namely: to the wife of the settlor the sum of £4,000 and to four other women, annuities of less sums. Clause 3 then continued: "and the settlor doth hereby declare that each of the said annuitants shall be entitled to enjoy her annuity free from income tax and directs the trustees to pay in addition to each annuitant the income tax which may be payable in respect thereof after allowing for any exception or abatement to which the annuitant may by law be entitled." This summons was taken out by one of the trustees of the settlement asking, *inter alia*, whether the annuities payable under cl. 3 were payable subject to or free of income tax. The Income Tax Act, 1918, All Schedule Rules, r. 19, provides that when an annuity is payable wholly out of profits or gains brought into charge, the person liable to make such payment is entitled to deduct therefrom income tax; r. 23 (2) provides: "Every agreement for payment of interest, rent or other annual payment in full without allowing any such deduction shall be void."

UTHWATT, J., said an agreement, the subject-matter of which was that tax was not to be deducted when interest, rent or other annual payment was made, was void. If there was such an agreement here, r. 23 applied. In his opinion there was no such agreement. At the time when the settlement was executed the trust fund had already been transferred to trustees. The point of the settlement was that the settlor made no agreement with anybody but stated what rights were to attach to the fund in the names of the trustees. The result was to create equitable interests in the income of the fund. It might be difficult to define accurately what was the proprietary interest of an annuitant in the fund, but she had some equitable interest. Her right did not depend on agreement. The annuitant could not sue the settlor upon any agreement, nor could she sue the trustees in contract. That being so, there was no agreement, and r. 23 (2) had no application. Accordingly, the annuities were payable free from income tax but subject to the provisions of the Finance Act, 1941, s. 25.

COUNSEL: *J. V. Nesbitt, Neville Gray*, K.C., and *Sir Lancelot Elphinstone*; *Vaisey*, K.C., and *Vanneck*; *Romer*, K.C., and *Danckwerts*.

SOLICITORS: *Church, Rendell*, for *Eastley & Co.*, Paignton; *Hunters*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Robinson *v.* Robinson.

Henn Collins, J. 19th January, 1943.

Divorce—Wife's decree nisi—Husband's adultery—Wife's adultery not in issue—Husband later seeks to make it an issue—Investigation of wife's conduct for alimony purposes—Res judicata—Public policy—Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 *Geo.* 5, *c.* 49), *s.* 190.

Summons adjourned into open court, brought by the husband respondent to a divorce suit on the ground of adultery and asking that an issue be tried as to whether or not the petitioner had committed adultery for the purpose of an inquiry which was taking place under s. 190 of the Supreme Court of Judicature (Consolidation) Act, 1925, under which the court, in making any order in the matter of payments, secured or otherwise to the wife for her maintenance, must pay regard, *inter alia*, to the conduct of the wife.

HENN COLLINS, J., said that the phrase "*res judicata*" was used to cover two separate states of things: first, the state of things where a judgment had passed between the parties and there was involved, as a

basis for that judgment, a finding or findings of fact; both of them were precluded from disputing those facts in subsequent litigation between them. The second aspect occurred where a party sought to set up facts, which, if they had been set up in the first suit, would or might have altered the position. To a wife's suit for dissolution on the ground of the husband's adultery an allegation of the wife's adultery might, but not necessarily would, have afforded a conclusive answer. She might still, although convicted of adultery, have obtained a decree, because her adultery would only have been a discretionary bar. The question of the wife's adultery was therefore not an issue of fact fundamental to the decree, nor necessarily involved in it, and was not therefore *res judicata* in the strict sense of the term. Another aspect of the matter was that the husband respondent did not in fact know the material he later found available, but he could have ascertained it by communicating with his solicitors, and he ought not to be permitted to avail himself now of that evidence. His lordship then referred to *Restall* v. *Restall* [1930] P. 189; *Mould* v. *Mould* [1933] P. 76; and *Lindsay* v. *Lindsay* [1934] P. 162, and said that the view he had come to was that a party ought not to be allowed to refrain from using information which he has, or of which by carelessness he has failed to get possession, and then, when it begins to affect his pocket under s. 190, to turn round and say: "Now I am proposing to prove it and put you to all the expense of a separate issue," and so on. Summons dismissed with costs.

COUNSEL: *Harold Brown*; *D. Armistead Fairweather*.

SOLICITORS: *Pritchard, Englefield & Co.*, for *Chamberlain and Martin*, Bognor Regis; *Marcy, Russell Cook & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1942 AND 1943.

E.P. 128. **Containers and Straps** (Leather and Textile) Order, Jan. 28

E.P. 140. **Control of Cotton Industry** (Adjustment of Single Yarn Prices) Direction (No. 1), Jan. 29.

E.P. 132. Control of the Cotton Industry (No. 40) Order, Jan. 27.

E.P. 133. Control of the Cotton Industry (No. 41) Order, Jan. 27.

E.P. 134. Control of the Cotton Industry (No. 42) Order, Jan. 27.

E.P. 2694. Control of Motor Fuel General Licence, Dec. 8.

E.P. 2695. Control of Motor Fuel General Licence, Dec. 8.

No. 98. **Customs.** Export of Goods (Control) (No. 1) Order, Jan. 25. (Amending S.R. & O., 1942, No. 2660).

E.P. 142. **Employment of Women** (Control of Engagement) Order, Jan. 28.

E.P. 145. **Essential Work** (Shipbuilding and Ship-Repairing) (Exemption) Directions, Jan. 28.

No. 129. **Fire Services** (Emergency Provisions). National Fire Service (Alteration of Fire Areas) Regulations, Jan. 25.

E.P. 156. **Food** (Inspection of Undertakings) Order, 1942. Directions, Feb. 1 (Wholesalers in Northern Ireland to keep records of purchases and sales of certain foods).

No. 59. **Goods and Services.** Price Controlled Goods (Sales by Tender) (Maximum Price) Order, Jan. 21.

E.P. 125. **Hearth Furniture** (Control of Manufacture and Supply) Order, Jan. 26.

E.P. 138. **Metal Furniture** (Control of Manufacture and Supply) (No. 2) Order, Jan. 29.

E.P. 147/L.3. **Metropolitan Police Courts** Order, Jan. 27.

E.P. 104. **Musical Instruments** (Control of Manufacture and Supply) (No. 2) Order, Jan. 21. (Amending S.R. & O., 1942, No. 1459).

E.P. 58. **Sales by Auction and Tender** (Control) Order, Jan. 20.

E.P. 141. **Undertakings** (Restriction on Engagement) (Exemption) Directions, Jan. 28 (Exemption of women over the age of 18).

Notes and News.

Honours and Appointments.

The Board of Trade have appointed Mr. ARTHUR HAROLD WARD, O.B.E., to be Official Receiver in Bankruptcy, and Mr. WILLIAM JAMES DAVIES to be Deputy Official Receiver in Bankruptcy for the Bankruptcy Districts of the County Courts holden at Chester, Wrexham, Bangor, Portmadoc and Festiniog as from the 1st February, 1943. From that date the Official Receiver will function from the Friends Meeting House, Hunter Street, Liverpool.

The Colonial Office announce that Mr. HENRY WILLIAM BUTLER BLACKALL, Attorney-General, Gold Coast, has been appointed Chief Justice of Trinidad and Tobago, in succession to Sir Charles Gerahty, who is retiring. Mr. Blackall was called to the Irish Bar in 1912.

Mr. J. F. GUILE, Town Clerk of Aberystwyth, is to be the first whole-time Town Clerk of Grantham (Lincolnshire). Mr. Guile was admitted in 1927.

Notes.

The usual monthly meeting of the directors of The Law Association was held on the 1st February, Mr. G. D. Hugh Jones in the chair. There were six other directors present. Applications for assistance were considered and £113 was voted in relief of deserving applicants. The Secretary reported the result of the annual appeal to be three life members and twenty-three annual subscribers, and other general business was transacted.

The Board of Trade have, with the approval of the Treasury, decided that, in respect of the period beginning 3rd March, 1943, and ending 2nd June, 1943, the rate of premium payable under any policy issued under the Commodity Insurance Scheme shall be at the rate of 2s. 6d. per cent., per month. The monthly and three-monthly policies for a fixed sum and three-monthly adjustable policies hitherto issued will be continued. The new rate is a reduction of 50 per cent. on the rate for the current period.

HIRE-PURCHASE CONTROL.

The Board of Trade, after consultation with the Central Price Regulation Committee and the government departments concerned, have made an order under Defence (General) Regulations, prohibiting the hire-purchase of price-controlled goods. Exceptions to the order have been made for furniture, perambulators, motor-cycles and motor-cycle combinations. The order will not affect hire-purchase agreements entered into before the date of the order, nor will it prevent the making of a new agreement in order to readjust the terms of an existing agreement made at the hirer's request, provided that no additional goods are included in the new agreement. The order also provides that a new hire-purchase agreement may be made, if the hirer so requests, in respect of goods which have sustained war damage, subject to certain conditions specified in the order.

The effect of the order is that hire-purchase can only be effected where specific provision is made in an order under s. 2 of the Goods and Services (Price Control) Act, 1941. Such provision has been made for furniture in the General Furniture (Maximum Prices, Maximum Charges and Records) Order (S.R. & O., 1942, No. 2402), and for perambulators in the Perambulators (Maximum Prices and Charges) Order (S.R. & O., 1943, No. 135). Similar provision will be made shortly for motor-cycles and motor-cycle combinations, but arrangements for this are not yet complete, and in order to avoid hardship in the meanwhile, motor-cycles and motor-cycle combinations are also excluded from the operation of the present order.

The title of the new order, which comes into operation on 1st March, is the Hire-Purchase (Control) Order, 1943 (S.R. & O., 1943, No. 157). Copies will be obtainable in due course, price 1d., through any bookseller or newsagent or direct from H.M. Stationery Office, Kingsway, London, W.C.2.

WAR DAMAGE VALUE PAYMENTS.

Claimants entitled to war damage compensation for land and buildings, and their professional advisers, are generally aware that a value payment (which is the kind of payment normally made in cases where the property is a "total loss" within the meaning of the Act) is not made at present and is unlikely to be made until after the war. An exception can be made to meet the building requirements of persons engaged on work of public importance, and also, in certain circumstances, to assist a claimant who is in need of funds to secure alternative housing accommodation or business premises.

Consideration has recently been given to the question of authorising, subject to appropriate safeguards, advances of value payments in other types of case. The Commission has now received from the Treasury a direction that it may at its discretion make an advance of the value payment where it is satisfied that persons entitled in due course to such a payment have incurred expenditure which was necessary or expedient and not contrary to any statutory regulation, bye-law or other restriction, on works for the demolition, clearance, or repair of war damaged buildings, or for the construction, on the old or on a new site, of a new building to be used in substitution for the damaged building.

This direction will enable an advance of the value payment to be made where, for example, an owner of an extensively damaged building has carried out at his own expense demolition in order to protect surviving parts of the property or to recover materials and fixtures for use later in the permanent rebuilding; or, again, to an owner who has been able to repair a dwelling-house which is a "total loss" so as to make a part of it habitable; or where the owner of a destroyed property has been able to construct some other building for use in its place, provided that the works were legally executed, i.e., were not contrary to some statute or statutory regulation or bye-law.

The proviso bears a particular relation to Defence Reg. 56A, under which no building work (including the repair of war damage) costing more than £100 on any property in any year can be carried out except under licence from the Ministry of Works and Planning, and to s. 7 of the War Damage Act, under which, in certain publicly specified areas, the public interest with respect to town and country planning is safeguarded.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1943.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.		EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice FARWELL
Monday,	Feb. 15	Mr. Blaker	Mr. Jones	Mr. Hay
Tuesday,	.. 16	Andrews	Hay	Reader
Wednesday,	.. 17	Jones	Reader	Blaker
Thursday,	.. 18	Hay	Blaker	Andrews
Friday,	.. 19	Reader	Andrews*	Jones
Saturday,	.. 20	Blaker	Jones	Hay

		GROUP A.		GROUP B.	
DATE		Mr. Justice BENNETT *Non-Witness*	Mr. Justice SIMONDS *Witness*	Mr. Justice MORTON *Witness*	Mr. Justice UTHWATT *Non-Witness*
Monday,	Feb. 15	Mr. Andrews	Mr. Jones	Mr. Blaker	Mr. Reader
Tuesday,	.. 16	Jones	Hay	Andrews	Blaker
Wednesday,	.. 17	Hay	Reader	Jones	Andrews
Thursday,	.. 18	Reader	Blaker	Hay	Jones
Friday,	.. 19	Blaker	Andrews	Reader	Hay
Saturday,	.. 20	Andrews	Jones	Blaker	Reader